Office - Supreme Court, U.S.
FILED
NOV 8 1982
ALEXANDER L. STEVAS,
CLERK

CASE NO. 82-5534

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

WILLIAM MELVIN WHITE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JIM SMITH
Attorney General
Tallahassee, Florida

ROBERT L. BOGEN
Assistant Attorney General

SHARON LEE STEDMAN
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401-5295
Telephone (305) 837-5062

Counsel for Respondent

TABLE OF CONTENTS

	PAGE
TABLE OF CITATIONS	ii
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT -	3-8
POINT I	
IN AFFIRMING THE IMPOSITION OF PETITIONER'S SENTENCE OF DEATH, THE FLORIDA SUPREME COURT DID NOT ADOPT SUCH A BROAD AND VAGUE CONSTRUCTION OF THE "HINDER...GOVERNMENTAL FUNCTION" AGGRAVATING CIRCUMSTANCE AS TO VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS.	3-6
POINT II	
THE PETITIONER'S DEATH SENTENCE WAS NOT IMPOSED IN THE TRIAL COURT AND UPHELD IN THE FLORIDA SUPREME COURT WITHOUT "THE TYPE OF INDIVIDUALIZED CONSIDERATION OF MITIGATING FACTORS...REQUIRED BY THE EIGHTH AMENDMENT IN CAPITAL CASES," LOCKETT V. OHIO, 438 U.S. 586, 606 (1978).	6-7
POINT III	
THE FLORIDA SUPREME COURT'S REVIEW OF THE AGGRAVATING AND MITIGATING CIRCUMSTANCES IN PETITIONER'S CASE DID NOT CONTRAVENE THE COURT'S DUTY TO "[GUARANTEE] THAT THE [AGGRAVATING AND MITIGATING] REASONS PRESENT IN ONE CASE WILL REACH A SIMILAR RESULT TO THAT REACHED UNDER SIMILAR CIRCUMSTANCES IN ANOTHER CASE," PROFFITT V. FLORIDA, 428 U.S. 242, 251 (1976).	7-8
CONCLUSION	8
CERTIFICATE OF SERVICE	9

TABLE OF CITATIONS

	PAGE
CASES:	
Brown v. Wainwright, 392 So.2d 1327 (Fla.) cert. denied, ___ U.S. ___ 102 S.Ct. 542 70 L.Ed.2d 407 (1981)	3
Eddings v. Oklahoma, ___ U.S. ___ 102 S.Ct. 869 71 L.Ed.2d 1 (1982)	6
Francois v. State, 407 So.2d 885 (Fla. 1982)	5
Godfrey v. Georgia, 446 U.S. 420 100 S.Ct. 1759 64 L.Ed.2d 398 (1981)	5
Gregg v. Georgia, 428 U.S. 153 96 S.Ct. 2909 49 L.Ed.2d 859 (1976)	5
Hargrave v. State, 366 So.2d 1 (Fla. 1978)	4
Proffitt v. Florida, 428 U.S. 242 96 S.Ct. 2960 49 L.Ed.2d 913 (1976)	7
Provence v. State, 337 So.2d 783 (Fla. 1976), cert. denied, 431 U.S. 969 97 S.Ct. 2929 53 L.Ed.2d 1065 (1977)	4
White v. State, 403 So.2d 331 (Fla. 1981)	5
OTHER AUTHORITY:	
Fla. Stat. §921.141(5) (1981)	6
§921.141(5)(e) (1977)	5
§921.141(5)(g) (1981)	4
§921.141(5)(g) (1977)	5
§921.141(6) (1977)	6

QUESTIONS PRESENTED

POINT I

WHETHER IN AFFIRMING THE IMPOSITION OF PETITIONER'S SENTENCE OF DEATH, THE FLORIDA SUPREME COURT ADOPTED SUCH A BROAD AND VAGUE CONSTRUCTION OF THE "HINDER...GOVERNMENTAL FUNCTION" AGGRAVATING CIRCUMSTANCE AS TO VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS?

POINT II

WHETHER THE PETITIONER'S DEATH SENTENCE WAS IMPOSED IN THE TRIAL COURT AND UPHELD IN THE FLORIDA SUPREME COURT WITHOUT "THE TYPE OF INDIVIDUALIZED CONSIDERATION OF MITIGATING FACTORS...REQUIRED BY THE EIGHTH AMENDMENT IN CAPITAL CASES," LOCKETT V. OHIO, 438 U.S. 586, 606 (1978)?

POINT III

WHETHER THE FLORIDA SUPREME COURT'S REVIEW OF THE AGGRAVATING AND MITIGATING CIRCUMSTANCES IN PETITIONER'S CASE CONTRAVENED THE COURT'S DUTY TO "[GUARANTEE] THAT THE [AGGRAVATING AND MITIGATING] REASONS PRESENT IN ONE CASE WILL REACH A SIMILAR RESULT TO THAT REACHED UNDER SIMILAR CIRCUMSTANCES IN ANOTHER CASE," PROFFITT V. FLORIDA, 428 U.S. 242, 251 (1976)?

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Statement of the Facts.

ARGUMENT

POINT I

IN AFFIRMING THE IMPOSITION OF PETITIONER'S SENTENCE OF DEATH, THE FLORIDA SUPREME COURT DID NOT ADOPT SUCH A BROAD AND VAGUE CONSTRUCTION OF THE "HINDER...GOVERNMENTAL FUNCTION" AGGRAVATING CIRCUMSTANCE AS TO VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS.

In Brown v. Wainwright, 392 So.2d 1327, 1331 (Fla.), cert. denied, ___U.S.___, 102 S.Ct. 542, 70 L.Ed.2d 407 (1981), the Florida Supreme Court described its function in reviewing a death sentence. First, the Supreme Court reviews each sentence for procedural regularity.

> The second aspect of our review process is to ensure relative proportionality among death sentences which have been approved statewide. After we have concluded that the judge and jury have acted with procedural regularity, we compare the case under review with all past capital cases to determine whether or not the punishment is too great. Proffitt v. Florida, 428 U.S. 242 [96 S.Ct. 2960, 49 L.Ed.2d 913](1976); State v. Dixon, 283 So.2d 1 (Fla. 1973), cert. denied, 416 U.S. 943 [94 S.Ct. 1951, 40 L.Ed.2d 295](1974). In those cases where we found death to be comparatively inappropriate, we have reduced the sentence to life imprisonment. See Malloy v. State, 382 So.2d 1190 (Fla. 1979); Burch v. State, 343 So.2d 831 (Fla. 1977); Jones v. State, 332 So.2d 615 (Fla. 1976).
>
> Neither of our sentence review functions, it will be noted, involves weighing or reevaluating the evidence adduced to establish aggravating and mitigating circumstances. Our sole concern on evidentiary matters is to determine whether there was sufficient competent evidence in the record from which the judge and jury could properly find the presence of appropriate aggravating or mitigating circumstances. If the findings of aggravating and mitigating circumstances are so supported, if the jury's recommendation was not

> unreasonably rejected, and if the death sentence is not disproportionate to others properly sustainable under the statute, the trial court's sentence must be sustained even though, had we been triers and weighers of fact, we might have reached a different result in an independent evaluation.

In Petitioner's case, the trial Judge did not find the contested aggravated circumstance upon an assumption, as asserted by Petitioner, but, rather, upon strong proof of the requisite intent to hinder the enforcement of laws. The proof of the requisite intent was through testimony of eyewitness and co-defendant DiMarino. DiMarino testified that Guy Smith, another co-defendant, said he did not want any witnesses [to the aggravated battery perpetrated on the victim], that if DiMarino and Petitioner were going to take care of business, not to run a sloppy act (R 482). DiMarino further testified that this meant that he and Appellant were to take the victim, Gracie Maw Crawford, and kill her (R 484). The evidence was, therefore, strong and convincing to show that the dominant motive for murder was the elimination of a witness who, in fact, was the victim of an aggravated battery. Riley v. State, 366 So.2d 19 (Fla. 1978). Obviously, the intent of Petitioner and the other two convicted murderers, Smith and DiMarino, was to avoid detection and possible prosecution for committing an aggravated battery which would hinder the enforcement of laws. The mere fact of death did not invoke this circumstance, contrary to the Petitioner's allegation.

Further, what is forbidden under Florida law is doubling-up of aggravating circumstances based on the same aspect of a defendant's criminal conduct. Provence v. State, 337 So.2d 783 (Fla. 1976), cert. denied, 431 U.S. 969, 97 S.Ct. 2929, 53 L.Ed.2d 1065 (1977). See also, Hargrave v. State, 366 So.2d 1 (Fla. 1978). A trial judge may not use the same incidents as a basis for finding that the capital felony was committed for the purpose of hindering the lawful exercise or enforcement of the criminal laws of the state, section 921.141(5)(g), Florida Statutes (1981), and also for a finding

that the capital felony was committed to avoid or prevent a lawful arrest, section 921.141(5)(e), Florida Statutes (1977). White v. State, 403 So.2d 331 (Fla. 1981). See also, Francois v. State, 407 So.2d 885 (Fla. 1982). In the well-reasoned order imposing the death penalty, the trial judge was well aware of Florida law as the court felt that, under the circumstances of the Petitioner's individual case, the incidents were more appropriate to a finding under section 921.141(5)(g), Florida Statutes (1977). The reasoning contained in said order supports the Respondent's position that the statute is not vague and provides a meaningful basis for distinguishing the few cases which the death penalty is imposed from the many cases in which it is not. Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976).

The Respondent submits that no limiting instructions, other than the statute itself, is necessary as the aggravating circumstance at issue is already limited in a meaningful way. Godfrey v. Georgia, 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1981). In Godfrey, the aggravating circumstance complained of read in its entirety that the offense "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." 446 U.S. at 422. The jury sentenced Godfrey to death solely on the basis of that one aggravating circumstance. But the jury only found beyond a reasonable doubt "that the offense of murder was outrageously or wantonly vile, horrible and inhuman." 446 U.S. at 426. Since the jury's finding did not encompass a finding as to "depravity of mind," "torture," or "an aggravated battery to the victim," and the trial judge did not give any limiting instructions as to the meaning of the terms "outrageously or wantonly vile, horrible, and inhuman," this Honorable Court reversed Godfrey's death sentences. This Court reasoned that in light of the facts and circumstances of the murders that Godfrey was convicted of, the Georgia Supreme Court did not apply a constitutional construction of the phrase "outrageously or wantonly vile, horrible or inhuman in that [they] involved...depravity of mind...." 446 U.S.

at 432. Godfrey, therefore, is simply not applicable to the instant case.

POINT II

THE PETITIONER'S DEATH SENTENCE WAS NOT IMPOSED IN THE TRIAL COURT AND UPHELD IN THE FLORIDA SUPREME COURT WITHOUT "THE TYPE OF INDIVIDUALIZED CONSIDERATION OF MITIGATING FACTORS...REQUIRED BY THE EIGHTH AMENDMENT IN CAPITAL CASES," LOCKETT V. OHIO, 438 U.S. 586, 606 (1978).

The trial court specifically limited the aggravating circumstances that the jury could consider to those enumerated in section 921.141(5), Florida Statutes (1977). The mitigating circumstances were not so limited (R 823). At the sentencing hearing, defense counsel emphasized the fact that DiMarino received a fifteen year prison term for his involvement (R 817). Defense counsel was not limited to arguing only the enumerated mitigating circumstance found in section 921.141(6), Florida Statutes (1977). Therefore, the Petitioner's assertion that a "reasonable juror" (emphasis added) could infer that he was precluded from considering any non-enumerated mitigating factor is totally without merit. Eddings v. Oklahoma, ___U.S. ___, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)(Imposition of a sentence of death done without the type of individualized consideration of mitigating factors where the trial court refused to consider in mitigation, as a matter of law, evidence of a turbulent family history, of beatings by a harsh father, and of severe emotional disturbance)(emphasis added).

The jury in the instant case not only recommended the death sentence but did so unanimously (A-1). Therefore, the Respondent submits that the jury was possessed of no doubt but that the Petitioner committed the actual especially heinous, atrocious, and cruel murder of Gracie Mae Crawford and that he was deserving of the ultimate penalty-death. The trial court followed the law and imposed the sentence of death after an individualized sentence determination. For the trial court to have done otherwise would have contravened the

requirement that death sentences be imposed to ensure relative proportionality among death sentences which have been approved statewide.

POINT III

THE FLORIDA SUPREME COURT'S REVIEW OF THE AGGRAVATING AND MITIGATING CIRCUMSTANCES IN PETITIONER'S CASE DID NOT CONTRAVENE THE COURT'S DUTY TO "[GUARANTEE] THAT THE [AGGRAVATING AND MITIGATING] REASONS PRESENT IN ONE CASE WILL REACH A SIMILAR RESULT TO THAT REACHED UNDER SIMILAR CIRCUMSTANCES IN ANOTHER CASE," PROFFITT V. FLORIDA, 428 U.S. 242, 251 (1976).

The Respondent respectfully submits that the Florida Supreme Court gave all the consideration that the Petitioner's case warranted. The points raised on appeal were well briefed by both sides, oral argument was had before the supreme court, and the Florida Supreme Court correctly held that none of the points raised merited discussion.

The Supreme Court's function on evidentiary matters in reviewing death sentences is solely to determine whether there was sufficient competent evidence in the record from which the judge and jury could properly find the presence of appropriate aggravating or mitigating circumstances. Brown v. Wainwright, supra. The Florida Supreme Court found that the findings of the trial judge were supported by the evidence. The trial court properly performed its duty under the law, the Supreme Court properly performed its function in reviewing death sentences, and the Petitioner cannot be heard to complain. The Petitioner's trial was well tried, he had the benefit of competent trial counsel, none of his constitutional rights were violated as so found by the Florida Supreme Court, the jury unanimously recommended the penalty of death, and the trial court issued a well-reasoned and legally supportable order imposing the death sentence. The trial court followed the mandates of Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976), by setting forth in writing its factfindings that sufficient statutory aggravating circum-

stances existed and were not outweighed by statutory mitigating circumstances (A 2-10).

The Petitioner's allegation that the Florida Supreme Court failed to undertake responsibility to perform its function of death sentence review with a maximum of rationality and consistency because of the length of its opinion is frivolous. The Florida Supreme Court gave the Petitioner's case what was warranted under the individualized circumstances of his cause. The mere length of an opinion alone cannot be said to be in violation of Proffitt v. Florida, supra. The Petitioner's sentence of death is warranted by his own actions in the brutal murder that he committed and is consistent with other sentences imposed in similar circumstances. The Petitioner's death was not wantonly or freakishly imposed and should not be disturbed by this Honorable Court.

CONCLUSION

WHEREFORE, the Respondent respectfully requests that this Honorable Court deny the Petitioner's Petition for Writ of Certiorari to the Supreme Court of Florida.

Respectfully submitted,

JIM SMITH
Attorney General

Bob Bogen /sls

ROBERT L. BOGEN
Assistant Attorney General

Sharon Lee Stedman

SHARON LEE STEDMAN
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401-5295
Telephone (305) 837-5062

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by mail/courier, to Richard H. Burr, III, Esquire, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, this 5th day of November, 1982.

Sharon Lee Steaman
Of Counsel

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

INDICTMENT NO. CR78-1840

STATE OF FLORIDA,

Plaintiff,

vs.

WILLIAM MELVIN WHITE,

Defendant.

_____/

FILED IN OPEN COURT
THIS 21 DAY OF December, 19 78
R. P. Kirkland, Clerk
BY _____ D.C.

VERDICT

A majority of the jury advise and recommend to the Court that it impose a sentence of the death penalty upon the defendant, WILLIAM MELVIN WHTIE.

_____ Number of jurors who recommend life imprisonment.

12 Number of juro·s who recommend the death penalty.

_____
JURY FOREMAN

DATED AT ORLANDO, ORANGE COUNTY, FLORIDA

THIS 21 day of December, 1978.

A I

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CR78-1840

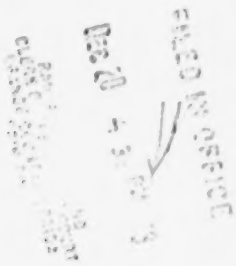
STATE OF FLORIDA,

Plaintiff,

vs.

WILLIAM MELVIN WHITE,

Defendant.



SENTENCE

This Court has weighed and considered the total evidence received in this cause and the advisory sentence returned by the jury. This date I am also filing my written findings of fact as required by law.

In short, this was a particularly brutal, atrocious and cruel murder. Gracie Mae Crawford was beaten about the face to the extent that she received, according to Dr. Hegert, a sub-dural hematoma. Then highly intoxicated so her will to resist was gone, she was forceably kidnapped even though asking to go home to her children. You and your accomplice coldly and cooly looked for a lonly spot, took her over a five foot fence and as she lay on the ground, stabbed her fourteen (14) times followed by a ceremonial slitting of her throat. The unfeeling, indifferent, cold blooded ease in which all of this was done could not have been done by one unaccustomed or inexperienced with cruel death.

The law of this state permits a sentence of death for murder in the first degree and the facts of this case require it.

I (concur in) (~~hereby overrule~~) the recommendation of the jury in this case.

This Court, after weighing the aggravating and mitigating circumstances finds that sufficient aggravating circumstances exist as enumerated in Florida Statute 921.141 (5) to require imposition of the death penalty, and that there are insufficient mitigating circumstances,

as enumbrated in sub section (6) to outweigh the aggravating circumstances.

Do you, or anyone on your behalf, have any legal cause to show why sentence should not be pronounced?

No legal cause having been shown which would preclude prenouncment of sentence, does anyone wish to offer any testimony or make any statement relevent to the sentence to be imposed?

You, William M. White,having previously been adjudicated guilty of murder in the first degree for the killing of Gracie Mae Crawford, as charged in indictment No. CR78-1840, now,

It is the sentence of the law and the judgment of this Court that you, William M. White for the murder of Gracie Mae Crawford, be committed to the custody of the Department of Corrections in the State of Florida, and, at a time to be fixed by the Governor of the State of Florida, you shall be put to death by means of electrocution as provided by Florida Statute 922.01.

May God have mercy on your soul.

The Sheriff of Orange County, Florida, shall deliver you to the Department of Corrections at a place provided for your reception. The Sheriff shall also deliver a copy of this judgment and sentence to the Department of Corrections.

I now advise you that it is your right to appeal this judgment and sentence and you have thirty (30) days from today within which to file your appeal with the Florida Supreme Court.

Failure on your part to appeal within the thirty (30) day period shall constitute a waiver of your right to appeal.

You are entitled to assistance of counsel in taking your appeal and upon your request and a showing that you are unable to afford a lawyer, which instrument I ask you now to sign, one will be provided at the expense of the State of Florida upon appointment by this Court.

Please sign your written acknowledgment of your rights to appeal.

The Defendant,William M. White, is remanded to the custody of the Sheriff of Orange County, Florida, who shall deliver him to the STate Prison according to Florida Statute 922.111.

DONE and ORDERED in Chambers at Orlando, Orange County, Florida this 21st day of December, 1978.

CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CR78-1840

STATE OF FLORIDA,

Plaintiff,

vs.

WILLIAM MELVIN WHITE,
aka "SNIVELHEAD",

Defendant.

_____/

FILED IN OFFICE
DEC 27 1978
CLERK CIRCUIT COURT
ORANGE COUNTY, FLA.
BY

FINDING OF FACT

Based upon the evidence presented, the Court finds:

The Defendant, William Melvin White, also known as "Snivelhead", is a 33 year old, single, Caucasian male who was born on May 23, 1945. He is approximately 5'7" tall, weighs approximately 130 pounds, and has extensive tatoos on both arms. He is a member of a Kentucky chapter of the Outlaw Motorcycle Club.

The victim, Gracie Mae Crawford, was a 28 year old Caucasian female who had three children. She was 5'½" tall and weighed 110 pounds. The medical examiner's testimony showed that, at the time of her death, between 3:00 and 4:00 A.M. on June 6, 1978, her blood alcohol showed .32, indicating that she was quite intoxicated.

During the evening hours of June 5, 1978, Gracie Mae Crawford and her date, Leslie McBride, went to the Inferno Lounge, a night club located on South Orange Blossom Trail in Orange County. That evening, Mr. McBride left the Inferno Lounge without his date and went home. Later that evening, several members of the Outlaw Motorcycle Club were seen talking to the victim, Gracie Mae Crawford, at the Inferno Lounge.

Gracie Mae Crawford was found murdered the following day. Mr. McBride identified her body.

After midnight on June 6, 1978, deputies from the Orange County Sheriff's Office responded to a disturbance caused by members of the

Outlaw Motorcycle Cl[illegible] at the Inferno Lounge. [illegible] deputies took a knife from the defendant, William Melvin White, who had been causing a disturbance and asked him to leave. The testimony showed that White had been drinking, but that he knew what he was doing. The deputies gave the knife to his girlfriend, Sami Renee Nestle. The Defendant, White, and Ms. Nestle left in her car, a 1975 blue AMC Hornet, Tag #DEJ-436. One of the deputies observed Ms. Nestle give the knife back to the Defendant, White.

Later, as the Inferno Lounge was closing at 2:00 A.M., there was a second incident which was investigated by the Orange County Sheriff's Office, which again, involved members of the Outlaw Motorcycle Club. During the second incident, the victim, Mrs. Crawford, left the premises in the company of several Outlaw members including a co-Defendant, Richard C. "Dino" Dimarino, a co-Defendant, Guy Ennis "Wolf" Smith, Mike "Gorilla" Kerse, John "Patch" Dimarino, and Linda Altizer.

The evidence showed that the victim was taken to 2309 Surfside Way, Orange County, Florida, the home of Joe "Wildman" Watts and Julie Watts which also served as an Outlaw clubhouse. The testimony showed that at approximately 2:45 to 3:00 A.M. on June 6, 1978, shortly after her arriv at Surfside Way, the victim, Gracie Mae Crawford was severely beaten by three men, the Defendant, William Melvin "Snivelhead" White, Guy Ennis "Wolf" Smith and Richard C. "Dino" Dimarino, all members of the Outlaw Motorcycle Club.

The beating continued over a period of 15 to 20 minutes during which time the victim was alternately screaming, crying, calling for help, and asking to be taken home. Her face was bloodied at least twice. She was forceably washed off in the sink twice by the co-Defendant, Smith She was beaten in the face, knocked to the ground, and kicked in the stomach, while on the ground, pulled up by the hair, and again struck by the Defendant, White. The victim's blood was on the sink, the floor and the walls of the kitchen and it required 30 minutes to clean up the blood by one of the other girls. However, the officers were still able to find the victim's blood at multiple locations in the kitchen during the execution of a subsequent search warrant. The medical examiner

testified that the girl suffered multiple areas of lacerations with extensive contusions and abrasions of the face and head. She also had a scalp hematoma with frontotemporal cerebral subarachnoid hemorrhage. The official cause of death was massive hemorrhage due to multiple stab wounds of the chest.

The testimony showed that the victim was taken outside and placed in the front seat of Ms. Nestles' blue Hornet, between the Defendant, White, who was driving and the co-Defendant, Dimarino, who was in the passenger's seat.

At this point, the other co-Defendant, Smith, standing next to White told White and Dimarino, "I don't want any witnesses. If you take care of business, don't run a sloppy act." Smith held the title of the Florida regional enforcer for the Outlaws. Dimarino was the Orlando enforcer. Smith then left.

Dimarino testified that this meant to kill the girl. She asked to be taken home but was driven towards a remote area by White. The car was stopped briefly enroute and Dimarino and White exchanged places.

Dimarino drove to an area near Seaworld and stopped the car at a dead end road. Both White and Dimarino took the girl towards a 5' fence. Dimarino climbed over the fence while White held the girl. White passed the girl up over the fence to Dimarino, who held her until White also climbed over. Dimarino threw the girl down and White straddled the girl, drew a knife, leaned over, and commenced to stab the victim fourteen times in the chest and face. He then cut her throat and handed the knife to Dimarino saying "you might as well implicate yourself." Dimarino then cut her throat once and returned the knife to White.

While leaving the area they ran out of gas at the Seaworld parking lot entrance. They were later identified by Seaworld Security guards who finally gave them gas. Dimarino produced a false identification and White was observed with blood on his arm. The time at Seaworld was recorded from 3:22 A.M. to 4:30 A.M.

Fearing discovery, they returned to the body scene, threw the girl back over the fence, and stuffed her body in the trunk.

She was then taken to a desolate area of Orange County where her body was dumped by a dirt road and a railroad track.

They returned to the Suffside clubhouse where White washed off his knife. They picked up Sami Nestle and drove to Dimarino's house on Hillcrest. Enroute they stopped to close the hatch cover of the trunk which was still open. White and Dimarino were observed by a neighbor washing the car early in the morning.

Expert witnesses confirmed the blood found in the car matched that of the victim.

In determining whether the Defendant should be sentenced to death or life imprisonment; the Court is mandated by Section 921.141 (5) Florida Statutes (1977), to apply the facts to certain enumerated "aggravating" circumstances and such "mitigating" circumstances as one applicable in this case. This Court, in reviewing the facts of the case, further considered only those facts and circumstances which were known and made available to the Defendant.

First, the "aggravating" circumstances:

a) The Defendant was not under sentence of imprisonment at the time the crime was committed. Circumstance "a" is not applicable.

b) The Defendant had not been previously convicted of another capital felony or of another felony involving the use of threat of violence to another person. Circumstance "b" is not applicable.

c) In the murder of Gracie Mae Crawford, the Defendant did not create a risk of death to persons other than Gracie Mae Crawford. Circumstance "c" is not applicable.

d) The murder of Gracie Mae Crawford was committed while the Defendant was engaged in the commission of a kidnapping. The evidence is clear that Gracie Mae Crawford was severely beaten to the extent of causing brain damage. Further, she was quite intoxicated. She was "helped" from the kitchen to the car by Richard Dimarino. She asked to be taken home: She was placed between Dimarino and White and against her will, forceably and secretely confined for the purpose of murdering her in a remote area. Circumstance "d" is applicable.

e) The murder of Gracie Mae Crawford was not committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody. Although it may be argued that the crime was committed for the purpose of avoiding or preventing a lawful arrest by hindering law enforcement officers from discovering the commission of an aggravated battery by Smith and his co-defendants and avoiding punishment and further

that the murder was accomplished to eliminate the victim of their crime, the Court has taken the construction of this circumstance most favorable to the defendant and finds that these facts would be more appropriate under circumstance (g) below.

f) The murder was not committed for pecuniary gain. Circumstance "f" is not applicable.

g) The murder of Gracie Mae Crawford was committed to disrupt or hinder the enforcement of laws, i.e., to escape detection and punishment for the crime of aggravated battery. See circumstance (e) above. Circumstance "g" is applicable.

h) The murder was expecially henious, wicked, and cruel. The victim, beaten and intoxicated, was quite helpless and unable to defend herself from the Defendant's conscientious, willful, purposeful, and savage attack. The Defendant repeatedly struck the victim in the chest and face with a knife causing fourteen separate puncture wounds, at least three of which would have alone been fatal. To insure the death of his victim, the Defendant then sliced her throat. She died as a result of planned, methodical, cruel, wanton, malicious, atrocious, conscienceless, pitiless crime unnecessarily tortuous to the victim. Without further elaboration, circumstance "h" is applicable.

Having found that four "aggravating" circumstances exist, it becomes necessary to determine if sufficient "mitigating" circumstances exist to outweigh the "aggravating" circumstances.

a) The Defendant has not previously been convicted of any felonies. Circumstance "a" is mitigating.

b) The Defendant had been drinking but knew what he was doing. There is no evidence that the murder was committed while the Defendant was under the influence of extreme mental or emotional disturbance. Circumstance "b" is not applicalbe.

c) The victim was not a participant in the Defendant's conduct nor did she consent to the Defendant's acts or actions. Circumstance "c" is not applicable.

d) The evidence shows that the Defendant was one of the primary actors in the murder. Circumstance "d" is not applicable.

e) The evidence shows that the Defendant did not act under the domination of any other person and the evidence does not establish he acted under extreme duress. Circumstance "e" is not applicable.

f) The Defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was not impaired. His actions clearly showed he knew what he was doing during the time of the murder. Circumstance "f" is not applicable.

g) At the time of the murder, Defendant was 33 years of age. He was old enough to fully appreciate the criminality of his conduct and the evidence shows this awareness throughout. Circumstance "g" is not applicable.

The sentence to be imposed is not to be determined simply by subtracting the number of mitigating circumstances from the number of aggravating circumstances. The sentence to be pronounced must be based on the totality of the evidence, as applied to the enumerated "aggravating" circumstances and such "mitigating" circumstances are applicable. The "aggravating" circumstances have been proven beyond and to the exclusion of every reasonable doubt. One "mitigating" circumstance is present, however, it is not sufficient to outweigh the "aggravating" circumstances.

The majority of the jury has recommended death.

This Court, after much thoughtful consideration with due consideration to the majority recommendation of the jury and recognizing its' solomn responsibility to make the ultimate decision as to whether or not the death penalty should be imposed, concluses, based on the aggravating circumstances far outweighing the mitigating circumstances that the death sentence is the only appropriate penalty.

The Court does concur in the majority recommendation of the jury and finds that the facts require the death penalty.

DONE and ORDERED in Chambers at Orlando, Orange County, Florida thsi 28th day of December, 1978.

Frederick Pfeiffer

FREDERICK PFEIFFER, JUDGE
Criminal Justice Division

Copies:

State Attorney James W. Hart
David Kaplan, Attorney for the Defendant